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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 WILLIAM CECIL THORNTON,  
12 CDCR #V-64547,

13 Plaintiff,

14  
15 vs.

16 EUKETA OLIVER, San Diego County  
17 Public Defender;  
18 VICTORIA MATTHEWS, Appellate  
19 Attorney/Public Defender,

20 Defendants.

Civil No. 14cv2341 GPC (NLS)

**ORDER:**

**(1) DENYING MOTION TO  
PROCEED *IN FORMA*  
*PAUPERIS* AS BARRED BY  
28 U.S.C. § 1915(g)  
[ECF Doc. No. 2]**

**AND**

**(2) DISMISSING CIVIL ACTION  
WITHOUT PREJUDICE FOR  
FAILURE TO PAY FILING  
FEE REQUIRED BY  
28 U.S.C. § 1914(a)**

21 William Cecil Thornton ("Plaintiff"), proceeding pro se and currently incarcerated  
22 at Valley State Prison, in Chowchilla, California, has filed a civil rights complaint  
23 ("Compl.") pursuant to 42 U.S.C. § 1983.

24 Plaintiff seeks damages against a public defender and appointed appellate counsel  
25 for allegedly denying him access to the courts, rendering ineffective assistance of  
26 counsel, and violating his due process rights during 2009 and 2010 state criminal and  
27 appellate proceedings. *See* Compl. (ECF Doc. No. 1) at 2-5, 7.

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1 Plaintiff has not prepaid the civil filing fee required by 28 U.S.C. § 1914(a);  
 2 instead, he has submitted a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to  
 3 28 U.S.C. § 1915(a) (ECF Doc. No. 2).

# 4 I.

## 5 MOTION TO PROCEED IFP

6 “All persons, not just prisoners, may seek IFP status.” *Moore v. Maricopa County*  
 7 *Sheriff’s Office*, 657 F.3d 890, 892 (9th Cir. 2011). “Prisoners,” like Plaintiff, however,  
 8 “face an additional hurdle.” *Id.* In addition to requiring prisoners to “pay the full  
 9 amount of a filing fee,” in installments as provided by 28 U.S.C. § 1915(a)(3)(b), the  
 10 Prison Litigation Reform Act (“PLRA”) amended section 1915 to preclude the privilege  
 11 to proceed IFP:

12 . . . if [a] prisoner has, on 3 or more prior occasions, while  
 13 incarcerated or detained in any facility, brought an action or  
 14 appeal in a court of the United States that was dismissed on  
 15 the grounds that it is frivolous, malicious, or fails to state a  
 claim upon which relief can be granted, unless the prisoner is  
 under imminent danger of serious physical injury.

16 28 U.S.C. § 1915(g). “This subdivision is commonly known as the ‘three strikes’  
 17 provision.” *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005) (hereafter  
 18 “*Andrews*”).

19 “Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP.”  
 20 *Id.*; see also *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (hereafter  
 21 “*Cervantes*”) (under the PLRA, “[p]risoners who have repeatedly brought unsuccessful  
 22 suits may entirely be barred from IFP status under the three strikes rule[.]”). The  
 23 objective of the PLRA is to further “the congressional goal of reducing frivolous  
 24 prisoner litigation in federal court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir.  
 25 1997). “[S]ection 1915(g)’s cap on prior dismissed claims applies to claims dismissed  
 26 both before and after the statute’s effective date.” *Id.* at 1311.

27 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,  
 28 which were dismissed on the ground that they were frivolous, malicious, or failed to state

1 a claim,” *Andrews*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the  
 2 district court styles such dismissal as a denial of the prisoner’s application to file the  
 3 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153  
 4 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited by  
 5 section 1915(g) from pursuing any other IFP action in federal court unless he can show  
 6 he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g);  
 7 *Cervantes*, 493 F.3d at 1051-52 (noting § 1915(g)’s exception for IFP complaints which  
 8 “make[] a plausible allegation that the prisoner faced ‘imminent danger of serious  
 9 physical injury’ at the time of filing.”).

## 10 II.

### 11 APPLICATION TO PLAINTIFF

12 As an initial matter, the Court has carefully reviewed Plaintiff’s pleading and has  
 13 ascertained that it contains no “plausible allegation” to suggest he “faced ‘imminent  
 14 danger of serious physical injury’ at the time of filing.” *Cervantes*, 493 F.3d at 1055  
 15 (quoting 28 U.S.C. § 1915(g)). Instead, Plaintiff seeks to sue his public and appointed  
 16 appellate defenders for deficient performance while representing him in state criminal  
 17 proceedings. *See* Compl. at 3-5.

18 A court “‘may take notice of proceedings in other courts, both within and without  
 19 the federal judicial system, if those proceedings have a direct relation to matters at  
 20 issue.’” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v.*  
 21 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel.*  
 22 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).  
 23 Therefore, this Court takes judicial notice that Plaintiff, William Cecil Thornton, CDCR  
 24 #V-64547, has had more than three prior prisoner civil actions dismissed on the grounds  
 25 that they were frivolous, malicious, or failed to state a claim upon which relief may be  
 26 granted.

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1 They are:

2 1) *Thornton v. Neotti, et al.*, S. D. Cal. Civil Case No. 3:10-cv-1677-LAB-BGS  
3 (S.D. Cal. January 3, 2011 Order Dismissing Second Amended Complaint for Failing to  
4 State a Claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b)) (ECF Doc. No. 13);  
5 and (May 17, 2012 Mandate of USCA affirming the decision of the USDC) (ECF Doc.  
6 No. 22) (strike one);

7 2) *Thornton v. Cate, et al.*, S. D. Cal. Civil Case No. 3:10-cv-1585-JLS-PCL  
8 (S.D. Cal. June 28, 2011 Order Sua Sponte Dismissing Second Amended Complaint for  
9 Failing to State a Claim pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)) (ECF Doc.  
10 No. 30); and (Dec. 16, 2011 Order of USCA dismissing appeal pursuant to Ninth Circuit  
11 Rule 42-1) (ECF Doc. No. 38) (strike two);

12 3) *Thornton v. Cavalin, et al.*, S.D. Cal. Civil Case No. 3:11-cv-0108-BEN-  
13 CAB (S.D. Cal. July 19, 2011 Order Dismissing First Amended Complaint as Frivolous  
14 pursuant to 28 U.S.C. §§ 1915(e)(2)(B) & 1915A(b) (ECF Doc. No. 7); and (Dec. 13,  
15 2011 Order of USCA dismissing appeal pursuant to Ninth Circuit Rule 42-1) (ECF Doc.  
16 No. 13) (strike three);

17 4) *Thornton v. Cavalin, et al.*, S.D. Cal. Civil Case No. 3:11-cv-2309-MMA-  
18 PCL (S.D. Cal. Jan. 9, 2012 Order Granting Motion to Proceed *In Forma Pauperis* and  
19 Dismissing Complaint as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b))  
20 (ECF Doc. No. 3); (April 11, 2012 Order of USCA finding appeal frivolous and directing  
21 appellate to pay \$455 fee or face dismissal for failing to prosecute) (ECF Doc. No. 9);  
22 and (May 10, 2012 Order of USCA dismissing appeal pursuant to Ninth Circuit Rule 42-  
23 1) (strikes four and five); and

24 5) *Thornton v. Deddeh*, S.D. Cal. Civil Case No. 3:11-cv-2401-LAB-KSC  
25 (S.D. Cal. Jan. 17, 2012 Order Granting Motion to Proceed *In Forma Pauperis* and  
26 Dismissing Civil Action as Frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b))  
27 (ECF Doc. No. 5); (May 10, 2012 Order of USCA finding appeal frivolous and directing  
28 appellant to pay \$455 fee or face dismissal for failing to prosecute) (ECF Doc. No. 11);

1 and (June 19, 2012 Order of USCA dismissing appeal pursuant to Ninth Circuit Rule 42-  
2 1) (ECF Doc. No. 13) (strikes six and seven).

3 Accordingly, because Plaintiff has, while incarcerated, accumulated more than the  
4 three “strikes” permitted pursuant to § 1915(g), and he fails to make a “plausible  
5 allegation” that he faced imminent danger of serious physical injury at the time he filed  
6 his Complaint, he is not entitled to the privilege of proceeding IFP in this action.<sup>1</sup> *See*  
7 *Cervantes*, 493 F.3d at 1055; *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999)  
8 (finding that 28 U.S.C. § 1915(g) “does not prevent all prisoners from accessing the  
9 courts; it only precludes prisoners with a history of abusing the legal system from  
10 continuing to abuse it while enjoying IFP status”); *see also Franklin v. Murphy*, 745 F.2d  
11 1221, 1231 (9th Cir. 1984) (“[C]ourt permission to proceed IFP is itself a matter of  
12 privilege and not right.”).

### 13 III.

#### 14 CONCLUSION AND ORDER

15 For the reasons set forth above, the Court hereby:

16 (1) **DENIES** Plaintiff’s Motion to Proceed IFP (ECF Doc. No. 2) as barred by  
17 28 U.S.C. § 1915(g);


18 (2) **DISMISSES** this action sua sponte without prejudice for failing to prepay  
19 the \$400 civil and administrative filing fees required by 28 U.S.C. § 1914(a);<sup>2</sup> and

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21 <sup>1</sup> Even if Plaintiff were able to proceed IFP, his Complaint would be subject to  
22 immediate sua sponte dismissal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)  
23 because it is duplicative of another case he filed seeking the same relief against his  
24 appointed counsel. *See Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995)  
25 (finding sua sponte dismissal of complaint as frivolous proper under former 28 U.S.C.  
§ 1915(d) if it “merely repeats pending or previously litigated claims.”) (citations and  
internal quotations omitted); *Thornton v. Oliver*, S.D. Cal. Civil Case No. 11cv1367  
BEN (BLM ) (July 16, 2012 Order Granting IFP and Dismissing Action for Failing to  
State a Claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)) (ECF Doc. No. 25).

26 <sup>2</sup> If Plaintiff wishes to pursue his claims, he must commence a new and separate  
27 civil action by filing a complaint pursuant to FED.R.CIV.P. 3 which is accompanied by  
28 the \$400 in civil and administrative filing fees required by 28 U.S.C. § 1914(a). Plaintiff  
is further cautioned that because he is not eligible to proceed IFP, he will also not be  
entitled to the U.S. Marshal service authorized by 28 U.S.C. § 1915(d) and FED.R.CIV.P.  
4(c)(3). Finally, because Plaintiff is a prisoner, any complaint he files will be subject  
to the screening required by 28 U.S.C. § 1915A(a) and dismissed sua sponte if it is

**IT IS SO ORDERED.**

  
HON. GONZALO P. CURIEL  
United States District Judge

14cv2341 GPC (NLS)